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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, }
Plaintiff, } 15-CR-0005-TOR
v. } United States' Briefing on
KENNETH BROWN, } *Peoples*
Defendant. }

Plaintiff United States of America, by and through Michelle C. Ormsby, United States Attorney for the Eastern District of Washington, and Stephanie J. Lister and James A. Goeke, Assistant United States Attorneys for the Eastern District of Washington, submits the following briefing on *United States v. Peeples*, 630 F.3d 1136 (9th Cir. Mont. 2010).

At the conclusion of the hearing on April 27, 2015, this Court requested briefing from the parties regarding *United States v. Peeples*, 630 F.3d 1136; 2010 U.S. App. LEXIS 26273 (9th Cir. 2010). In *Peeples* the Ninth Circuit held that:

Because the Walsh Act requires the district court to exercise its discretion in applying the mandatory release conditions to each individual's circumstances, and in view of the established principle that a statute should be read to avoid serious constitutional issues, Peeples's constitutional challenge to the Walsh Act does not succeed.

Peeples at 1139.

Based on the foregoing and the United States' prior briefing, in the United States' view, this Court remains free under both *Peeples* and *Grady v. North Carolina*, — S.Ct. —, 2015 WL 1400850 (March 30, 2015) to impose a GPS search condition as a condition of pretrial release for each Defendant based on the particular facts and charges of each of the cases before the Court. Accordingly, the United States submits that a GPS search condition is necessary to ensure each of the Defendants' appearances, to protect the community, and to ensure each Defendants' compliance with the Court's conditions of release in each of the following cases: *United States v. Terry Michael Grimm*, 2:14-CR-183-TOR; *United States v. Clifford Will Kelsey, III*, 2:15-CR-019-JLQ; *United States v. Wayne Orville Morris II*, 2:15-CR-018-JLQ; and, *United States v. Kenneth K. Watts* 2:15-CR-029-JLQ. Finally, the United States notes that in *United States v. Kenneth K. Watts*, 2:15-CR-029-JLQ, at ECF No. 25, the Court has already denied a similar request by Defendant Watts to be relieved of electronic monitoring as a condition of pretrial release while noting the discretion retained by the Court under *Peeples* to impose electronic monitoring as a condition of pretrial release. ECF No. 25 at 4.

DATED April 28, 2015.

Michael C. Ormsby
United States Attorney

s/Stephanie J. Lister & James A. Goeke

Stephanie J. Lister
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1 I hereby certify that on April 28, 2015, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification
3 of such filing to the following, and/or I hereby certify that I have mailed by United
4 States Postal Service the document to the following non-CM/ECF participant(s):
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